



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

APR 19 2016

Charles A. Pascal, Jr., Esq
402 Grant Avenue
Leechburg, PA 15656

Re: MUR 6807
Erin McClelland for Congress Committee, *et. al.*

Dear Mr. Pascal:

On April 18, 2014, the Federal Election Commission notified your clients Erin McClelland for Congress Committee and David Lazear in his official capacity as treasurer, of a complaint alleging violations of certain sections of the Federal Election Campaign Act of 1971, as amended ("Act"). On March 15, 2016 (and as amended on April 8, 2016), based upon the information contained in the complaint, and information provided by your clients, the Commission decided to dismiss the complaint and close its file in this matter. Furthermore, the Commission cautioned your clients to review and follow the requirements of 52 U.S.C. § 30118(a), concerning coordinated communications in order to ensure future compliance with the Act and Commission Regulations. Accordingly, the Commission closed its file in this matter on March 15, 2016.

Documents related to the case will be placed on the public record within 30 days. *See* Statement of Policy Regarding Disclosure of Closed Enforcement and Related Files, 68 Fed. Reg. 70,426 (Dec. 18, 2003) and Statement of Policy Regarding Placing First General Counsel's Reports on the Public Record, 74 Fed. Reg. 66,132 (Dec. 14, 2009). The Factual and Legal Analysis, which explains the Commission's finding, is enclosed for your information.

If you have any questions, please contact Ruth Heilizer, the attorney assigned to this matter, at (202) 694-1650.

Sincerely,

Daniel A. Petalas
Acting General Counsel

BY: Jeff S. Jordan
Assistant General Counsel
Complaints Examination and
Legal Administration

Enclosure:
Factual and Legal Analysis

11-0910144061

1 **FEDERAL ELECTION COMMISSION**

2 **FACTUAL AND LEGAL ANALYSIS**

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5 **MUR:** 6807

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7 **RESPONDENTS:** Erin McClelland for Congress Committee and
8 David Lazear in his Official Capacity as Treasurer
9 Erin McClelland
10 The Arche Wellness Foundation
11

12 **I. INTRODUCTION**

13 This matter was generated by a Complaint filed with the Federal Election Commission
14 ("Commission") by Megan A. Carpenter, alleging violations of the Federal Election Campaign
15 Act of 1971, as amended, (the "Act") by the Erin McClelland for Congress Committee
16 ("Committee") and David Lazear in his Official Capacity as Treasurer, Erin McClelland, and the
17 Arche Wellness Foundation ("Foundation"). The Complaint alleges that the Foundation made a
18 prohibited in-kind corporate contribution to McClelland and the Committee when the Foundation
19 paid for and aired an advertisement featuring McClelland as its executive director. The
20 Commission exercises its prosecutorial discretion and dismisses this matter based on the low
21 dollar amount at issue, the absence of any electoral content in the advertisement, and
22 McClelland's long-time role as a public spokesperson for the Foundation and its predecessor
23 business. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

II. FACTUAL AND LEGAL ANALYSIS

A. Background

Erin McClelland is currently a candidate for Congress in the 12th District of Pennsylvania.¹ She filed a Statement of Candidacy with the Commission on March 18, 2013. The Committee is McClelland's authorized campaign committee.

The Foundation is a Pennsylvania non-profit corporation that offers outpatient substance abuse rehabilitation and other mental health services. *See* Foundation Resp. at 1. McClelland, who is a psychologist and addiction specialist, is the founder, president, and executive director of the Foundation. *See id.* Prior to the Foundation operating as a non-profit organization, it operated as Arche Wellness, LLC, which McClelland founded in 2002. *See* Committee Resp. at 3. The Foundation acquired the business and assets of Arche Wellness, LLC and began operations as a non-profit corporation on August 1, 2013. *See* Foundation Resp. at 1; Committee Resp. at 3.; Arche Wellness, LLC Corporate Filings, *available at* <https://www.corporations.state.pa.us/corp/soskb/Corp.asp?2461799>.

The Complaint in this matter alleges that the Foundation paid for and disseminated a television advertisement that featured McClelland within 90 days of the May 20, 2014, primary election. Compl. at 1-2. The advertisement, which was posted on the Fox Pittsburgh YouTube channel, lasts 15 seconds and features a visual of McClelland speaking directly to the camera.² In the video, McClelland states:

¹ McClelland won the Democratic primary on May 20, 2014, making her the Democratic nominee for the general election on November 4, 2014.

² The Complaint provides a link to the YouTube video of the advertisement. *See id.* This link, however, no longer works.

1 I'm Erin McClelland of Arche Wellness, one of the most scientifically advanced
2 addiction recovery programs in the nation and the first of its kind to be licensed by the
3 PA Department of Health. We use intensive biochemical testing to identify and solve the
4 problem at its root cause. Call us or visit our website at ArcheWellness.com.³

5 While McClelland is speaking, background graphics display McClelland's name, title as
6 executive director, and contact information for Arche Wellness. The Complaint asserts that the
7 advertisement was scheduled to air from March 30, 2014, to May 25, 2014. *Id.* at 1.

8 The Committee and the Foundation do not deny that the Foundation paid for and aired
9 the advertisement. Instead, their Responses argue that the advertisement was not a coordinated
10 communication because it did not refer to McClelland in her capacity as a federal candidate and
11 did not include any political message. *See* Committee Resp. at 1; Foundation Resp. at 2.

12 Respondents also argue that the advertisement qualifies for the safe harbor for
13 commercial transactions because McClelland appeared in similar television advertisements and
14 "otherwise has promoted Arche Wellness" throughout her association with the Foundation and
15 Arche Wellness, LLC. Committee Resp. at 2; Foundation Resp. at 2-3. The Foundation
16 submitted a sworn affidavit by McClelland, averring that "Arche Wellness has used me as its
17 spokesperson in television and radio advertisements through all seven years of its existence" and
18 that "on numerous occasions" she has "appeared in local television and radio broadcasts in
19 advertisements of Arche Wellness." Erin McClelland Aff. ¶4 (May 6, 2014) (attached to
20 Foundation Resp.). The affidavit also attaches an exhibit listing McClelland's appearances and
21 activities associated with Arche Wellness, LLC and the Foundation. *Id.*, Ex. A. The list,
22 however, appears to contain only television and radio interviews, conference appearances, and
23 published articles—not television and radio advertisements for Arche Wellness. *Id.*

³ This website contains no electoral content.

1 According to contracts and invoices filed with the Federal Communications Commission
2 (“FCC”),⁴ McClelland purchased 441 advertising spots on behalf of the Foundation from WPGH
3 and WPMY, two local Pittsburgh television stations. *See* WPGH-TV Political Files for Erin
4 McClelland for Congress, *available at* [https://stations.fcc.gov/station-profile/wpgh-tv/political-](https://stations.fcc.gov/station-profile/wpgh-tv/political-files/browse-%3e2014-%3efederal-%3eus%20house-%3eerin%20mcclelland%20for%20congress)
5 [files/browse-%3e2014-%3efederal-%3eus house-%3eerin mcclelland for congress](https://stations.fcc.gov/station-profile/wpgh-tv/political-files/browse-%3e2014-%3efederal-%3eus%20house-%3eerin%20mcclelland%20for%20congress). These
6 spots were 15 seconds each, and scheduled to air from March 3, 2014, to June 15, 2014, between
7 11:30 pm and 4:59 am. *Id.* The contracts for these spots indicate that they cost \$2,205 in total,
8 or \$5 per spot. *Id.*

9 The contracts and invoices do not describe the contents of the specific advertisement that
10 aired in each spot, but the length of the spots and the identification of the Foundation and
11 McClelland as the advertiser and purchaser, respectively, suggest that the airtime purchased was
12 for the advertisement at issue in the Complaint. *Id.* Moreover, the Foundation has characterized
13 the advertisement as a “16 second commercial airing only in the early morning hours” and has
14 not disputed the Complaint’s assertion that the advertisement was scheduled to air from March
15 30, 2014, to May 25, 2014, which further supports the inference that the airtime was purchased
16 for the advertisement in question. *See* Foundation Resp. at 2.

17 **B. Legal Analysis**

18 Under the Act, corporations may not make contributions in connection with a federal
19 election and corporate officers may not consent to such contributions. 52 U.S.C. § 30118(a)

⁴ FCC regulations require broadcast stations to keep a public inspection file that contains a variety of information about each station’s operations, including a “political file” with information about political time sold or given away by each station. *See* 47 C.F.R. §§ 73.3526(e)(6), 73.3527(e)(5). A political file must include all requests for specific schedules of advertising time by candidates, as well as the final dispositions or “deals” agreed to by the broadcaster and the advertiser. *See* About Public Inspection Files, <https://stations.fcc.gov/about-station-profiles/>. These files are available on the FCC website. *Id.*

1 (formerly 2 U.S.C. § 441b(a)).⁵ A contribution includes a gift, subscription, loan, advance, or
2 deposit of money or anything of value made by any person for the purpose of influencing a
3 federal election. 52 U.S.C. § 30101(8)(A)(i) (formerly 2 U.S.C. § 431(8)(A)(i)). The term
4 “anything of value” includes in-kind contributions. 11 C.F.R. § 100.52(d)(1).

5 In-kind contributions include, among other things, expenditures made by any person “in
6 cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, his
7 authorized political committees, or their agents.” 52 U.S.C. § 30116(a)(7)(B)(i) (formerly
8 2 U.S.C. § 441a(a)(7)(B)(i)). Under 11 C.F.R. § 109.21, a communication is coordinated if it:
9 (1) is paid for by a person other than the candidate or candidate’s committee; (2) satisfies one or
10 more of the four content standards set forth at 11 C.F.R. § 109.21(c); and (3) satisfies one or
11 more of the six conduct standards set forth at 11 C.F.R. § 109.21(d).

12 Commission regulations also include several coordinated communications safe harbors,
13 including a safe harbor for commercial transactions.⁶ 11 C.F.R. § 109.21(i); Coordinated
14 Communications, 75 Fed. Reg. 55,947, 55,959 (Sept. 15, 2010). The safe harbor excludes from
15 the definition of a coordinated communication any public communication in which a federal
16 candidate is clearly identified only in his or her capacity as the owner or operator of a business
17 that existed prior to the candidacy, so long as the public communication does not promote,
18 attack, support, or oppose that candidate or another candidate who seeks the same office, and so
19 long as the communication is consistent with other public communications made by the business
20 prior to the candidacy in terms of the medium, timing, content, and geographic distribution. *Id.*

⁵ The Complaint alleges that McClelland and the Committee accepted “in-kind contributions well in excess of federal limits and source prohibitions.” Compl. at 2. Because the Foundation is registered as a corporation and may not make *any* contribution to a federal candidate, however, the Commission does not address the issue of excessive contributions. See 52 U.S.C. § 30116(a) (formerly 2 U.S.C. § 441a(a)).

1 Without reaching the questions of whether the ad was a coordinated communication or if
2 a safe harbor applied to the ad, the Commission dismisses this matter in its exercise of
3 prosecutorial discretion. First, the available information indicates that the Foundation spent only
4 \$2,205 to purchase 441, 15-second spots that aired exclusively during the early morning hours on
5 two local stations. See WPGH-TV Political Files for Erin McClelland for Congress, *available at*
6 [https://stations.fcc.gov/station-profile/wpghtv/political-files/browse-%3c2014-%3cfederal-](https://stations.fcc.gov/station-profile/wpghtv/political-files/browse-%3c2014-%3cfederal-%3eus_house-%3eerin_mcclelland_for_congress)
7 [%3eus_house-%3eerin_mcclelland_for_congress](https://stations.fcc.gov/station-profile/wpghtv/political-files/browse-%3c2014-%3cfederal-%3eus_house-%3eerin_mcclelland_for_congress). Second, at least on its face, the advertisement
8 solely promotes the *bona fide* business of the Foundation, and does not contain any electoral
9 content or promote, support, attack, or oppose McClelland or any other candidate. Although the
10 Commission has no specific examples of other advertisements that were similar to the
11 advertisement in question in medium, timing, content, and geographic distribution, it is clear that
12 McClelland has been involved with Arche Wellness, LLC and the Foundation as a *bona fide*
13 founder and spokesperson since at least 2002.

14 Accordingly, the Commission dismisses this matter pursuant to *Heckler v. Chaney*, 470
15 U.S. 821 (1985). See Statement of Reasons of Comm'rs. Walther, Petersen, Bauerly, Hunter,
16 and McGahn, MUR 6013 (Friends of Peter Teahen, *et al.*) (dismissing allegations where a
17 candidate's funeral home business paid for a television advertisement featuring the candidate
18 within 90 days of the election based on the low dollar amount at issue, the lack of electoral
19 content in the advertisement, and the specific factual circumstances concerning the production
20 and dissemination of the advertisement).